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In re Application of :  
MANALIS et al. :  
Application No. 10/669,883 : DECISION ON PETITION  
Filed: September 23, 2003 : UNDER 37 CFR 1.78(a)(3) and (6)  
Attorney Docket No. 0492611-0510 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed 22 July 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment. Because the amendment accompanying the petition further adds a priority claim to a prior-filed provisional application, the petition has been treated under 37 CFR 1.78(a)(6).

The petition is **DISMISSED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional and U.S. applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1) and (3) above.

A nonprovisional application that directly claims the benefit of a provisional application under 35 U.S.C. 119(e) must be filed within 12 months from the filing date of the provisional application. Although an application that itself directly claims the benefit of a provisional application is not required to specify the relationship to the provisional application, if the instant nonprovisional application is not filed within the 12 month period, but claims the benefit of an intermediate nonprovisional application under 35 U.S.C. 120 that was filed within 12 months from the filing date of the provisional application and claimed the benefit of the provisional application, the intermediate application must be clearly identified as claiming the benefit of

the provisional application so that the Office can determine whether the intermediate nonprovisional application was filed within 12 months of the provisional application and thus, whether the claim is proper. Applicant must state, for example, "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---." A benefit claim that merely states "this application claims the benefit of nonprovisional Application Nos. C and B, and provisional Application No. A" would be improper.

With regard to Item (1), applicant's benefit claim statement is set forth as: "This application is....claiming priority to Provisional Application No. 60/405,184, filed on August 22, 2002". An example of a proper benefit claim is: "This application is a continuation-in-part of U.S. Application No. 10/336,549, filed January 2, 2003, which claims priority to Provisional application 60/405,184, filed on August 22, 2002." See MPEP Section 201.11, Rev. 3, August 2005.

With respect to Item (3), applicant has not provided a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional.

Accordingly, before the petition under 37 CFR § 1.78(a)(6) can be granted, a renewed petition under 37 CFR § 1.78(a)(6) and a substitute amendment (complying with 37 CFR 1.121) or application data sheet (37 CFR 1.76) is required.

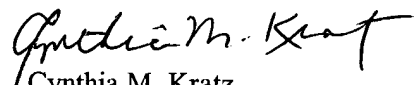
Further correspondence with respect to this matter should be addressed as follows:

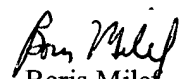
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Any questions concerning this matter may be directed to Cynthia Kratz at (571) 272-3286.

  
Cynthia M. Kratz  
Attorney Advisor  
Office of Petitions

  
Boris Milet  
Legal Examiner  
Office of Petitions